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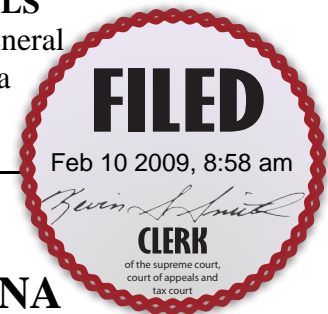
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**IN THE
COURT OF APPEALS OF INDIANA**

RICHARD A. EDWARDS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 79A02-0808-CR-752

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Les A. Meade, Judge
Cause No. 79D05-0801-FD-29

February 10, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Richard A. Edwards appeals his convictions and sentence for class D felony failure to register as a sex offender, class A misdemeanor failure of a sex offender to possess identification, and a habitual offender enhancement. We affirm in part and reverse in part.

Issues

Edwards raises the following issues:

- I. Did the State present evidence sufficient to sustain his convictions for failure to register as a sex offender and failure to possess the required identification?
- II. Is the seven-and-a-half-year sentence inappropriate in light of the nature of the offenses and his character?

Facts and Procedural History

On December 12, 1980, Edwards was convicted of class C felony child molesting in Fountain County. In 1994, the Indiana General Assembly enacted legislation requiring convicted sex offenders to register in jurisdictions in which they reside.¹ Because his 1980 conviction involved a crime committed against a victim under the age of twelve, Edwards's duty to register was effective for life. Ind. Code § 11-8-8-19(c)(2). From 1999 to 2006, Edwards was in and out of the Fountain County Jail and the Department of Correction ("DOC") for various offenses, including a class D felony invasion of privacy conviction in June 2003. He was placed on probation, but on March 19, 2004, the Fountain Circuit Court revoked his probation and imposed a three-year sentence. In August 2006, the DOC entered

¹ Ind. Code § 11-8-8-11 (formerly Ind. Code § 5-2-12-9).

Edwards's information into the state sex and violent offender registry. At that time, Edwards was in custody. Following his release, he never registered as a sex offender in any county.

In November 2006, Edwards began living in Tippecanoe County without any permanent residence. Around 9:15 a.m. on January 13, 2008, an intoxicated Edwards entered the women's restroom at Central Presbyterian Church in Lafayette. A five-year-old girl was also present in the restroom. When the child's mother, Alicia Burke, entered the restroom to check on her, she saw men's shoes underneath the toilet stall. Edwards exited the stall, apologized, and said he had entered the wrong restroom. Burke sought assistance from the associate pastor, Jeff Cover, who asked Edwards to leave and not return until he was sober. About an hour later, Cover observed Edwards in the building again, told him to leave, and called the police.

Lafayette Police Officer Mark Thayer found Edwards walking down the street and observed signs of intoxication. Edwards verbally identified himself and provided Officer Thayer with his date of birth and social security number. Officer Thayer arrested Edwards and transported him to the hospital due to his high blood alcohol content.

On January 14, 2008, the State charged Edwards with class D felony failure to register as a sex offender, class A misdemeanor failure of a sex offender to possess identification, class B misdemeanor public intoxication, and a habitual offender enhancement.² Following a bench trial, on April 14, 2008, the trial court found him guilty as charged.

² Indiana Code Section 35-50-2-8(h) provides:

On August 6, 2008, the trial court sentenced Edwards to three years for failure to register as a sex offender, one year for failure to possess identification, and 180 days for public intoxication, all to run concurrently. A four-and-a-half-year habitual offender enhancement was attached to the felony count, for an aggregate sentence of seven and a half years. This appeal ensued.

Discussion and Decision

I. Sufficiency of Evidence

Edwards contends that the State failed to present evidence sufficient to sustain his convictions for failure to register and failure to possess identification as a sex offender.³ When reviewing a challenge to the sufficiency of evidence, we neither reweigh evidence nor judge witness credibility. *Baumgartner v. State*, 891 N.E.2d 1131, 1137 (Ind. Ct. App. 2008). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* We will affirm if there is substantial evidence of probative value from which the reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

Pursuant to Indiana Code Section 11-8-8-11(a), a sex offender is required to register in the county in which he resides and, when he moves to a new county, he must update the registry by providing the address of his principal residence within seventy-two hours. A sex

The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

³ On appeal, Edwards does not challenge his conviction for public intoxication.

offender with no principal or temporary residence must report in person to the local law enforcement authority in his county of residence every seven days to report a temporary address. Ind. Code § 11-8-8-11(c). A knowing or intentional failure to do so is a class D felony. Ind. Code § 11-8-8-17(a)(1). Likewise, a sex offender is required to keep in his possession a valid driver's license or identification card, and a knowing or intentional failure to do so is a class A misdemeanor. Ind. Code § 11-8-8-15.

Here, Edwards does not dispute that he is a sex offender subject to the registration and identification statutes; he merely argues that the State failed to establish that he knowingly or intentionally failed to register and to possess identification. He claims that he was never informed of the requirements of the statutes, both of which were enacted after his 1980 child molesting conviction. We address knowledge of the registration requirement and knowledge of the identification requirement separately.

Edwards asserts that he was unaware of his statutory duty to register as a sex offender. At the outset, we note that Edwards's information was entered into the state sex offender registry, which is administrated by the DOC. Because the State did not summon any DOC representative to testify regarding its standard notification procedures, we cannot draw a reasonable inference that Edwards was informed of his duty to register from the mere fact that a DOC entry existed. However, Edwards had frequent contact with Fountain County law enforcement authorities after the 1994 enactment of the registration statute.

Edwards's criminal history from 1999 to 2004 indicates numerous instances when he was placed in the Fountain County Jail. State's Ex. 6-9. This includes misdemeanor

convictions for public indecency and indecent exposure. At trial, Fountain County Sheriff's Department Deputy Wurtsbaugh testified that in his thirty-one years as a sheriff's deputy, he had several dealings with Edwards. Tr. at 19. He also testified that he is one of two members of the sheriff's department specifically assigned to administrate the sex offender registry in Fountain County. *Id.* Deputy Wurtsbaugh explained the standard procedure that is followed when sex offenders enter the jail: they are photographed, given a form to fill out and sign, and advised, both verbally and in writing, of their duty to register. *Id.* at 20. On direct examination, Deputy Wurtsbaugh specifically referenced the standard information given to sex offenders in Fountain County:

Q: When you register something, what information do you give to the offender when they come to register, or when they are registered?

A: What information do I tell them?

Q: Yes.

A: They sign the bottom of [the] form and I make sure that they understand when it is that they are required to come back and [re-]register.

Q: Do you talk to them about any of their other requirements like you move and that sort of thing?

A: Yes.

Q: Is that explained at the time of registrations entered? Yes?

A: Yes.

Id. at 25-26.

Based on the foregoing, we may draw a reasonable inference that, on at least one of his Fountain County Jail placements, Edwards received the routine verbal and written

explanation of his duty to register pursuant to the standard operating procedure about which Deputy Wurtsbaugh testified. Moreover, evidence of DOC protocol, while not sufficient of itself, bolsters the foregoing evidence that Edwards was aware of his duty to register. Edwards was in DOC custody from the time his probation was revoked, in March 2004, to his release in August 2006. Although Deputy Wurtsbaugh was not employed by the DOC, he testified without objection that he was familiar with the following DOC protocol: “I’m aware that the Department of Corrections, when a sex offender is released from the Department of Corrections, they are supposed to be given notice of their duty to register.” *Id.* at 30. Also, Deputy Wurtsbaugh testified that State’s Exhibit 10, an August 2006 state sex offender registry entry containing Edwards’s photograph and personal data, was available to the public. *Id.* at 34. The image date on the photograph indicates that it was taken on August 15, 2006. St. Ex. 10. Therefore, when considered as a whole, the evidence most favorable to the judgment supports a reasonable inference that Edwards was aware of his duty to register. Accordingly, we affirm Edwards’s conviction for class D felony failure to register as a sex offender.

Next, we address Edwards’s assertion that he was unaware of his statutory duty to carry identification and therefore lacked the requisite mens rea to violate Indiana Code Section 11-8-8-15. The only evidence in the record regarding the identification requirement is Deputy Wurtsbaugh’s testimony:

Q: And what about the requirement to carry picture ID, is that explained?

A: Uhm, I’ve never explained that to anyone, because I’m not sure I was aware of that requirement.

Id. at 26. We conclude that the State failed to demonstrate that Edwards knowingly or intentionally failed to possess identification. As such, we reverse his conviction for class A misdemeanor failure of a sex offender to possess identification.

II. Sentencing

Edwards also challenges the appropriateness of his sentence. On appeal, we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [this] Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). A defendant bears the burden of persuading the reviewing court that his sentence meets the inappropriateness standard. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218.

We first address the nature of Edwards’s offenses. The advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed. *Id.* The advisory sentence for a class D felony is one and one-half years. Ind. Code § 35-50-2-7. The habitual offender statute allows for an additional fixed term of up to three times the advisory sentence for the underlying felony offense. Ind. Code § 35-50-2-8(h). Here, the underlying felony offense is failure to register as a sex offender. The circumstances surrounding the arrest indicate that an intoxicated Edwards was discovered in a church’s women’s restroom, in which a five-year-old girl was present. Despite being asked to leave the church, Edwards returned and reportedly re-entered the women’s restroom. These facts, when coupled with Edwards’s failure to register as a sex offender, support an enhanced sentence.

As for Edwards's character, he is a sixty-five-year-old habitual offender with two prior felony convictions: one for molesting a child under the age of twelve and one for invasion of privacy. He has numerous misdemeanor convictions that include public indecency, criminal recklessness, invasion of privacy, harassment, operating while intoxicated, and a 2004 indecent exposure conviction. Sent. Tr. at 6. His probation was revoked on numerous occasions, indicating that efforts at leniency have proven ineffective. Both the nature of the offense and Edwards's character support the sentence imposed. He has failed to carry the burden of establishing its inappropriateness. Therefore, we affirm his sentence.⁴

Affirmed in part and reversed in part.

ROBB, J., and BROWN, J., concur.

⁴ We note that our reversal of Edwards's class A misdemeanor conviction for failure to possess identification as a sex offender does not affect the sentence because the one-year sentence he received for this offense was to run concurrently with the seven-and-a-half-year sentence on the felony count.